

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
(REGION 9)**

In the Matter of:)	CASE NO.: 09-RD-145475
)	
COMMUNITY MERCY HEALTH)	
PARTNERS d/b/a MERCY MCCAULEY)	
CENTER,)	
)	
Employer,)	
)	
JENNIFER MARIE ANKROM,)	<u>EMPLOYER’S AMENDED REQUEST</u>
)	<u>TO REVIEW REGION 9 DIRECTOR’S</u>
Petitioner,)	<u>DECISION TO HOLD A</u>
)	<u>DECERTIFICATION ELECTION IN</u>
vs.)	<u>ABEYANCE</u>
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION (DISTRICT 1199, WV/KY/OH),)	
)	
Union.)	

I. INTRODUCTION

In accordance with National Labor Relations Board Rule and Regulation 102.71 (b)(1), Mercy McAuley Center (“MMC”) requests that the NLRB review the Region 9 Director’s February 27, 2015 decision to hold a decertification election in abeyance. His decision raises a substantial question of law or policy due to the absence of or departure from officially reported Board precedent.

II. FACTS

On February 2, 2015, Petitioner Jennifer Marie Ankrom filed a decertification petition seeking to decertify the SEIU as the representative of the MMC’s service and support employees (Exhibit A). Region 9 directed an election on February 20, 2015 (Exhibit B).

Previously, on November 24, 2014, the SEIU had filed an 8(a)(1)(5) charge against MMC (141604) alleging its refusal or failure to provide the SEIU with requested information in a timely manner necessary for the union to negotiate a successor agreement (Exhibit C). On February 20, 2015, the SEIU amended its charge to include an 8 (a)(3) violation (146448) alleging, among other things, that MMC solicited and aided its employees to circulate the decertification petition, engaged in surveillance of employees, and improperly interrogated employees (Exhibit D).

On February 27, 2015, the Region 9 Director informed MMC that the decertification election was going to be held in abeyance because probable cause existed that MMC did not meet its duty to furnish timely information to the union relative to collective bargaining and “that there are other unfair labor practice charges currently under investigation,” namely, amended charge 146448 that had alleged MMC’s participation in the filing of the decertification petition (Exhibit E).

On March 5, 2015, the Region 9 Director advised MMC that he had approved the withdrawal of charge 146448 that alleged conduct directly related to the filing of the decertification petition (Exhibit F). He did not, however, reconsider lifting the blocking charge imposed by charge 141604 relative to MMC’s have having provided the Union with timely and sufficient information to bargain collectively.

As outlined in the Region 9 Director’s proposed settlement agreement, the issue in charge 141604 related primarily to MMC’s alleged failure to provide the Union with each current bargaining unit member’s initial rate of pay and a copy of all current work rules, policies and manuals (Exhibit G). Setting aside the merits of whether such information was available or was provided to the union’s satisfaction, the union’s last offer in bargaining on February 12, 2015 was essentially to accept MMC’s last offer on wages and benefits and to keep most of the rest of the contract status quo (Exhibit H).

In other words, even if charge 141604 was true, the union had not been prejudiced in its ability to effectively negotiate and MMC's alleged failure to provide the information in a timely manner was unrelated to the election and should not be grounds to block it. As noted in the argument below, once the Region 9 Director was faced with the withdrawal of the 8(a)(3) claim in charge 146448 that alleged MMC's direct involvement in having the decertification petition filed, and was left only with stale allegations of not providing the union with enough information in a timely manner, the decertification election should no longer have been blocked by charge 141604. The decertification election should no longer be blocked.

III. ARGUMENT

The Board's rules under section 11731.2 (a) underscore that the Regional Director can proceed with an election despite the existence of an unfair labor practice by considering "the character, scope and timing of the conduct alleged in the charge, and the conduct's tendency to impair the employees' free choice." See, *LaGrasso Bros.*, No. 7-RD 3669, 2010 NLRB Reg. Dir. LEXIS 161,3-4; *La Farge North America*, No. 13-RC-20721, NLRB Reg. Dir. LEXIS 380,2,n.4; *Overnite Transportation Company*, No. 26-RD-1076, 2002 NLRB Reg. Dir. Dec. LEXIS 12,3.

The Board should not be allowed to apply its blocking charge practice as a *per se* rule without exercising its discretion to make a careful determination in each individual case whether the violation alleged is such that consideration of the election petition ought to be delayed or dismissed. *Suratt v. NLRB*, 463 F.2d 378 (5th Cir. 1972); See also, *Tempelton v. DixieDie Color Printing*, 444 F.2d 1064, 1069 (5th Cir. 1971). (Union cannot avoid the consequence of the loss of its majority status by the mere filing of an unfair labor practice charge against the employer; nor does the filing of such unproved charge relieve the Board of its statutory duty to consider and act on a petition for decertification).

Here, the Union's 8(a)(3) amended charge, filed just after Region 9's representation hearing, that MMC solicited and aided its employees to circulate the decertification petition, was specifically withdrawn undoubtedly because of a lack of support. That charge, if valid, arguably would have had a direct effect on the election and would have been a legitimate basis for a blocking charge. But it was unsupported.

The only charge left for blocking purposes here deals with whether MMC provided the Union with enough wage information and policy information in bargaining in November 2014. No evidence exists that even if this charge was valid that it would have had any influence in the filing of the decertification petition or the outcome of the decertification election.

Indeed, the union's last package offer accepted most of MMC's wage and benefits proposals and requested that the rest of the contract remain the same. No reasonable inferences could be drawn that the issues in this charge could motivate a decertification petition or otherwise influence its outcome. It follows then that the Region 9 Director should not continue to block the decertification election based on the merits of this charge.

IV. CONCLUSION

For the reasons outlined above, the Board should instruct the Region 9 Director to proceed with the decertification election initially directed on February 20, 2015.

Respectfully submitted,

/s/ Thomas J. Wiencek

Thomas J. Wiencek (#0031465)

tjwiencek@mercy.com

Mercy Health

388 South Main Street, Suite 500

Akron, Ohio 44311-4407

(513) 639-0196

Fax: (330) 253-8601

Counsel for Employer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of March 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the NLRB's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the NLRB's system. A hard copy has been served upon opposing counsel via regular U.S. Mail.

Michael J. Hunter, Esq.
Hunter, Carnahan, Shoub, Byard & Harshman
3360 Tremont Road
2nd Floor
Columbus, Ohio 43221
Counsel for Union

/s/ Thomas J. Wiencek

Thomas J. Wiencek (#0031465)

JAN-30-2015 22:35

NLRB

INTERNET
FORM NLRB-502
(2-08)

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD PETITION

DO NOT WRITE IN THESE SPACES

Case No.
09-RD-145475

Date Filed
February 2, 2015

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- ☐ RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☒ RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified. ☐ In unit previously certified in Case No. _____
- ☐ AG-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____. Attach statement describing the specific amendment sought.

2. Name of Employer MERCY MCALEY CENTER		Employer Representative to contact JENNIFER TOLLEFSON	Tel. No. 937-484-6121
3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 906 SCIOTO ST URBANA OH 43078		Fax No. 937-652-2072	
4a. Type of Establishment (Factory, mine, wholesaler, etc.) LONG TERM CARE FACILITY	4b. Identify principal product or service HEALTH CARE	Cell No. 937-631-7782	e-Mail JTollefson@mercy.com
5. Unit involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included See Attached Excluded See Attached		6a. Number of Employees in Unit: Present 74 Proposed (By UCAC)	6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).			
7b. <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8. Name of Recognized or Certified Bargaining Agent (If none, so state.) SEIU DISTRICT 1199, WV/KY/OH The Health care and Social		Affiliation CLC-CTW	
Address Service Union CTW, CLC 1395 Dublin Rd. Columbus, Oh 43215		Tel. No. 614-461-1199	Date of Recognition or Certification 01-27-11
		Cell No. 614-461-1549	Fax No. 614-461-1549
9. Expiration Date of Current Contract. If any (Month, Day, Year) 02-1-15		10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)	

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes <input type="checkbox"/> No <input type="checkbox"/>		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____			

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)

JENNIFER MARIE ANKROM

14a. Address (street and number, city, state, and ZIP code)

526 MAPLE TREE LANE
URBANA OH 43078

14b. Tel. No. EXT **937-484-6194**

14c. Fax No.

14d. Cell No. **937-508-7072**

14e. e-Mail **JAnkrom@mercy.com**

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) JENNIFER MARIE ANKROM	Signature <i>Jennifer M Ankrom</i>	Title (if any)
Address (street and number, city, state, and ZIP code) 526 Maple Tree Lane Urbana Oh 43078	Tel. No.	Fax No.
	Cell No. 937-508-7072	e-Mail JAnkrom@mercy.com

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ARTICLE 1UNION RECOGNITIONSection 1.

This Agreement is hereby entered into by and between Mercy McAuley Center located in Champaign County, Ohio, hereinafter designated as "MMC" or "Employer" and SEIU District 1199 WV/KY/OH, The Health Care and Social Service Union, CLC-CTW hereinafter designated as the "Union." MMC hereby recognizes and acknowledges the Union as the sole and exclusive bargaining representative of the employees who work in the classification of jobs outlined in Section 2 of this Article pursuant to certification by the National Labor Relations Board, Case No. 9-RM-1151 ("the bargaining unit").

Section 2.

The bargaining unit shall consist of all service and support employees employed by the Employer at its long term care facility located at 906 Scioto Street, Urbana, Ohio and no other locations, in the following job titles: activities coordinator; activity aide; activity assistant; administrative assistant; administrative coordinator, beautician; bus van driver; cook; data entry clerk; day care aide; dietary aide; dietary assistant; dietary specialist; dietary technician; driver; environmental services tech; food services specialist; groundskeeper; head server; health information clerk II; health information specialist; housekeeping assistant; laundry assistant; laundry coordinator; lead cook; lead environmental services technician; lead food & nutrition services; lead maintenance mechanic; linen specialist; maintenance assistant; maintenance mechanic; maintenance technician; material clerk; materials specialist; nurse assistant; occupational therapist asst; physical therapist asst LTC; receptionist; rehab services technician; rehabilitation technician; resident financial counselor; restorative aide; scheduler; secretary/receptionist; social services assistant; STNA/PCA/CNA; STNA/PCA/CNA (weekend); unit clerk; unit secretary, and PRNs who regularly worked at least 120 hours per quarter for three (3) out of four (4) quarters for 2011 and annually thereafter after this Agreement becomes effective measured in a "look back" of the previous year in December of each year, but excluding all business office clerical employees, all licensed practical nurses, all registered nurses and all professional employees, all confidential employees, guards and supervisors as defined in the Act.

Section 5

Included

&

Excluded

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

COMMUNITY MERCY HEALTH PARTNERS
D/B/A MERCY MCCAULEY CENTER ^{1/}

Employer

and

JENNIFER MARIE ANKROM

Case 09-RD-145475

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL
UNION (DISTRICT 1199, WV/KY/OH) ^{2/}

Union

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

I. INTRODUCTION

The Employer operates a long term health care facility with its principal place of business in Urbana, Ohio. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the Act on February 2, 2015 seeking to decertify the Union as the representative of the bargaining unit. ^{3/} The parties executed a Stipulation setting forth the facts at issue in this petition at a hearing conducted in Cincinnati, Ohio on February 10, 2015. There is no collective-bargaining agreement covering the employees in the bargaining unit and therefore no contract bar.

Pursuant to the parties' Stipulation, the unit at issue consists of: All service and support employees employed by the Employer at its long term care facility located at 906 Scioto Street, Urbana, Ohio and no other locations, in the following job titles: activities coordinator, activity

^{1/} The name of the Employer appears as amended at hearing. See Board Exhibit #2.

^{2/} The name of the Union appears as amended at hearing. See Board Exhibit #2.

^{3/} The Union contended at hearing that the processing of the petition should be blocked by pending unfair labor practice charges filed by the Union. The determination on whether to block processing of a petition is an administrative matter which is not litigable at hearing.

aide, activity assistant, administrative assistant, administrative coordinator, beautician, bus van driver, cook, data entry clerk, day care aide, dietary aide, dietary assistant, dietary specialist, dietary technician, driver, environmental services tech, food services specialist, groundskeeper, head server, health information clerk II, health information specialist, housekeeping assistant, laundry assistant, laundry coordinator, lead cook, lead environmental services technician, lead food & nutrition services, lead maintenance mechanic, linen specialists, maintenance assistant, maintenance mechanic, maintenance technician, material clerk, materials specialist, nurse assistant, occupational therapist asst, physical therapist asst LTC, receptionist, rehab services technician, rehabilitation technician, resident financial counselor, restorative aide, scheduler, secretary/receptionist, social services assistant; STNA/PCA/CNA, STNA/PCA/CNA (weekend), unit clerk, unit secretary, and PRNs who regularly worked at least 120 hours per quarter for three (3) out of four (4) quarters for 2011 and annually thereafter after this Agreement becomes effective measured in a "look back" of the previous year in December of each year, but excluding all business office clerical employees, all licensed practical nurses, all registered nurses and all professional employees, all confidential employees, guards and supervisors as defined in the Act. There are approximately 74 employees in the bargaining unit.

I have carefully reviewed the record evidence, the arguments of the parties at the hearing, and the parties' Stipulation. ^{4/}

II. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above-referenced narrative, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

^{4/} The Union and Employer both attempted to file post-hearing briefs which are procedurally defective and do not comport with the Board's Rules and Regulations. In any event, both briefs appear to focus on the specific arrangements for the election which are non-litigable issues. Accordingly, I have not considered either brief in issuing this Decision.

[A]ll service and support employees employed by the Employer at its long term care facility located at 906 Scioto Street, Urbana, Ohio and no other locations, in the following job titles: activities coordinator, activity aide, activity assistant, administrative assistant, administrative coordinator, beautician, bus van driver, cook, data entry clerk, day care aide, dietary aide, dietary assistant, dietary specialist, dietary technician, driver, environmental services tech, food services specialist, groundskeeper, head server, health information clerk II, health information specialist, housekeeping assistant, laundry assistant, laundry coordinator, lead cook, lead environmental services technician, lead food & nutrition services, lead maintenance mechanic, linen specialists, maintenance assistant, maintenance mechanic, maintenance technician, material clerk, materials specialist, nurse assistant, occupational therapist asst, physical therapist asst LTC, receptionist, rehab services technician, rehabilitation technician, resident financial counselor, restorative aide, scheduler, secretary/receptionist, social services assistant; STNA/PCA/CNA, STNA/PCA/CNA (weekend), unit clerk, unit secretary, and PRNs who regularly worked at least 120 hours per quarter for three (3) out of four (4) quarters for 2011 and annually thereafter after this Agreement becomes effective measured in a "look back" of the previous year in December of each year, but excluding all business office clerical employees, all licensed practical nurses, all registered nurses and all professional employees, all confidential employees, guards and supervisors as defined in the Act.

III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote on whether they wish to be represented for purposes of collective bargaining by Service Employees International Union (District 1199, WV/KY/OH). The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

IV. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision and Direction of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and

(3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

V. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list and if the conditions set forth above to warrant an election are satisfied, I will make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **February 27, 2015**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Because the list will be made available to all parties if it is determined to proceed to an election, please furnish **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office. *To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.*

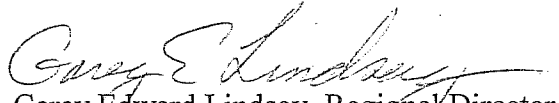
VI. NOTICE OF POSTING OBLIGATION

According to Section 103.20 of the Board's Rules and Regulations, the Employer, if an election is subsequently ordered, must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 6, 2015**. The request may not be filed by facsimile. The request may be filed electronically through the Agency's website, www.nlr.gov^{5/}, but may not be filed by facsimile.

Dated at Cincinnati, Ohio this 20th day of February 2015.


Gary Edward Lindsay, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

^{5/} To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Exhibit

C

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXB

DO NOT WRITE IN THIS SPACE

Case

Date Filed

09-CA-141604

November 24, 2014

INSTRUCTIONS:

File original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Mercy McAuley Center		b. Tel. No. 937-523-5347
d. Address (Street, city, state, and ZIP code) 908 Scioto St, Urbana, OH 43078		c. Cell No.
e. Employer Representative Steven Klie & Don Austin		f. Fax No. 937-523-5958
L. Type of Establishment (factory, mine, wholesaler, etc.) Hospital		g. e-Mail sekile@mercy.com
j. Identify principal product or service medical and long term care		h. Number of workers employed 50+ 500x

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The employer has interfered with, restrained, or coerced employees in the exercise of the rights guaranteed by the NLRA and refused to bargain collectively with the representatives of his employees; the employer has refused and or failed to provide all requested information in a timely manner and necessary for the union to negotiate of a successor agreement.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

SEIU District 1199, WV/KY/OH The Health Care and Social Service Union

4a. Address (Street and number, city, state, and ZIP code) 1395 Dublin Road, Columbus OH 43215	4b. Tel. No. 614-461-1199
	4c. Cell No. 614-302-8310
	4d. Fax No. 614-4611549
	4e. e-Mail gdavies@seiu1199.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

Service Employees International Union

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

(signature of representative or person making charge)

Geoff Davies, Administrative Organizer

(Printtype name and title or office, if any)

Tel. No. 614-461-1199

Office, if any, Cell No.
614-302-8310

Fax No. 614-4611549

e-Mail

gdavies@seiu1199.org

Address 1395 Dublin Road, Columbus OH 43215

11/22/14

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Collection of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 73 Fed. Reg. 74942-43 (Dec. 13, 2008). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
Amended CHARGE AGAINST EMPLOYER

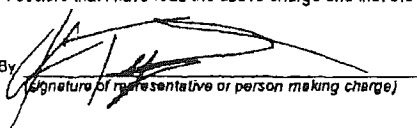
FORM EXEMPT U

DO NOT WRITE IN THIS SPACE

Case 09CA146448	Date Filed 2/19/2015
--------------------	-------------------------

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Mercy McAuley Center	b. Tel. No 937-484-6121
	c. Cell No.
	f. Fax No. 937-652-2027
d. Address (Street, city, state, and ZIP code) 906 Scioto Street Urbana, Ohio 43078	e. Employer Representative Jennifer Tollefson, Exec Dir Steven Kile, HR Dir.
	g. e-Mail jtollefson@mercy.com
	h. Number of workers employed 100
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Medical and Residential Care
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) The Employer has interfered with, restrained, and coerced employees in the exercise of rights protected by the Act by telling employees they are not permitted to discuss the union when at work In November of 2014 the Union requested attendance records regarding bargaining unit employees, and reiterated its request in February 4, 2015. Attendance policies are an issue in current collective bargaining negotiations. The employer has refused to provide the requested information The Employer has interfered, coerced and bargained directly with employees and solicited and assisted employees in the filing of a decertification petition in violation of the Act.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) SEIU District 1199, WV/KY/OH, The Health Care and Social Service Union	
4a. Address (Street and number, city, state, and ZIP code) 1395 Dublin Road Columbus OH, 43215	4b. Tel. No. 614 461-1199
	4c. Cell No.
	4d. Fax No. 614-461-1549
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (Signature of representative or person making charge)	Jaclyn Tipton, attorney (Print type name and title or office, if any)
Address 3360 Tremont Rd. Ste 230, Columbus, Ohio 43221	
2-19-15 (date)	
Tel. No. 614-442-5626	
Office, if any, Cell No.	
Fax No. 614-442-5625	
e-Mail jtipton@hcands.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 9
550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Agency Website: www.nlrb.gov
Telephone: (513)684-3686
Fax: (513)684-3946

Exhibit
E

February 27, 2015

Jennifer Marie Ankrom
526 Maple Tree Lane
Urbana, OH 43078

Thomas J. Wiencek, Esq.
Mercy Health Partners
388 S. Main Street Suite 500
Akron, OH 44311-4419

Re: MERCY MCAULEY CENTER
Case 09-RD-145475

Dear Ms. Ankrom and Mr. Wiencek:

Pursuant to the Employer's request and in accord with NLRB Case Handling Manual, Representation Proceedings, Section 11730.7, this letter is being issued to notify you that the petition in the above-captioned case will be held in abeyance pending the resolution of pending unfair labor practice cases filed by the Union against the Employer. I have determined in Case 09-CA-141604 that there is probable cause to believe the Employer has violated Section 8(a)(1) and (5) of the Act with respect to its duty to furnish information to the Union that is relevant to collective bargaining. In addition, there are other unfair labor practice charges currently under investigation. Accordingly, I have determined to hold in abeyance the scheduling of the election in this matter, which I had previously directed, until such time as the unfair labor practice issues have been resolved.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **March 13, 2015**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than **11:59 p.m. Eastern Time on March 13, 2015**.

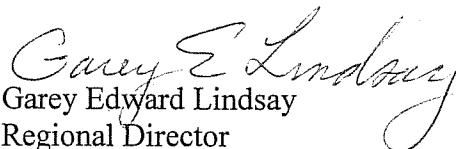
Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

February 27, 2015

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,


Gary Edward Lindsay
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Jennifer Tollefson, Mercy McAuley Center, 906 Scioto St
Urbana, OH 43078

Thomas J. Wiencek, ESQ., Mercy Health Partners, 388 S Main St Ste 500
Akron, OH 44311-4419

Todd Sarver, Labor Attorney, 30 W McCreight Ave Ste 105,
Springfield, OH 45504-1853

Service Employees International Union District 1199, WV/KY/OH, The Healthcare
and Social Service Union, CTW, CLC, 1395 Dublin Road, Columbus, OH 43215



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 9
550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Agency Website: www.nlr.gov
Telephone: (513)684-3686
Fax: (513)684-3946

Exhibit
F

March 5, 2015

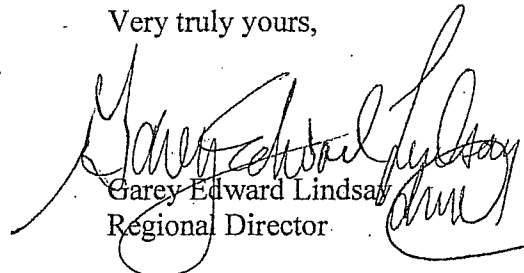
JENNIFER TOLLEFSON, ADMINISTRATOR
MERCY MCCAULEY CENTER
906 SCIOTO ST
URBANA, OH 43078-2299

Re: MERCY MCCAULEY CENTER
Case 09-CA-146448

Dear Ms. Tollefson:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,


Gary Edward Lindsay
Regional Director

cc: STEVEN E. KILE - HUMAN RESOURCES DIRECTOR - MERCY MCCAULEY
CENTER - 906 SCIOTO STREET - URBANA, OH 43078

MICHAEL J. HUNTER, ATTORNEY - HUNTER, CARNAHAN, SHOUB,
BYARD & HARSHMAN - 3360 TREMONT RD - COLUMBUS, OH 43221-2111

SEIU DISTRICT 1199, WV/KY/OH, THE HEALTHCARE AND
SOCIAL SERVICE UNION, CTC-CTW - 1395 DUBLIN RD
COLUMBUS, OH 43215-1086

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

MERCY MCAULEY CENTER

Case 09-CA-141604

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them on the bulletin board next to the time clock at the back employee entrance, where notices are posted for employees at its 906 Scioto Street, Urbana, Ohio facility. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

INTRANET POSTING - The Charged Party will also post a copy of the Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, on its intranet where information for employees is posted and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will submit a paper copy of the intranet or website posting to the Region's Compliance Officer when it submits the Certification of Posting and provide a password for a password protected intranet site in the event it is necessary to check the electronic posting.

E-MAILING NOTICE - The Charged Party will email a copy of the signed Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, to all employees who work at the facility located at 906 Scioto Street, Urbana, Ohio 43078. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 9 of the National Labor Relations Board in Case 09-CA-141604." The Charged Party will forward a copy of that e-mail, with all of the recipients' e-mail addresses, to the Region's Compliance Officer at Ann.Behrle@nrlb.gov.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
 Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party Mercy McAuley Center		Charging Party Service Employees International Union District 1199	
By: Name and Title	Date	By: Name and Title	Date
Recommended By:	Date	Approved By:	Date
TAMILYN A. THOMPSON, Field Examiner		Regional Director, Region 9	

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative and legally required to be provided.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative and legally required to be provided.

WE WILL NOT fail or refuse to bargain collectively with Service Employees International Union, District 1199 as the exclusive collective-bargaining representative of all service and support employees employed by the Employer at its long term care facility located at 906 Scioto Street, Urbana, Ohio and no other locations, in the following job titles: activities coordinator, activity aide, activity assistant, administrative assistant, administrative coordinator, beautician, bus van driver, cook, data entry clerk, day care aide, dietary aide, dietary assistant, dietary specialist, dietary technician, driver, environmental services tech, food services specialist, groundskeeper, head server, health information clerk II, health information specialist, housekeeping assistant, laundry assistant, laundry coordinator, lead cook, lead environmental services technician, lead food & nutrition services, lead maintenance mechanic, linen specialists, maintenance assistant, maintenance mechanic, maintenance technician, material clerk, materials specialist, nurse assistant, occupational therapist asst, physical therapist asst LTC, receptionist, rehab services technician, rehabilitation technician, resident financial counselor, restorative aide, scheduler, secretary/receptionist, social services assistant; STNA/PCA/CNA, STNA/PCA/CNA (weekend), unit clerk, unit secretary, and PRNs who regularly worked at least 120 hours per quarter for three (3) out of four (4) quarters for 2011 and annually thereafter after this Agreement becomes effective measured in a "look back" of the previous year in December of each year, but excluding all business office clerical employees, all licensed practical nurses, all registered nurses and all professional employees, all confidential employees, guards and supervisors as defined in the Act, by failing and refusing to furnish Service Employees International Union, District 1199 with information in a timely manner which is relevant and necessary to its function as such representative.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the Union with 1) Rate(s) of hire for each current bargaining unit member, 2) A copy of all current work rules that affect bargaining unit employee, 3) A copy of all policies related to employment conditions and benefits, including a copy of any and all manuals, and 4) Copies of all current hospital policies and procedures that relate to bargaining unit members, it requested on May 7 and August 22, 2014.

Mercy McAuley Center

(Employer)

Dated: _____

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866- 315-NLRB. You may also obtain information from the Board's website: www.nlr.gov,

550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Telephone: (513)684-3686
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

Union counter, 2/12/15, 9:10pm

1. Wages: ~~3.5%~~ 3.4% 2% per year, remove caps.
 - a. Shift differentials same as non-union (techs, RNs)
2. PTO: keep PTO bands, keep accruals rates and maximums the same, limit carryover to 200 hours – new hires as proposal.
3. EIB: Leave as current – status quo
4. ~~Retirement: negotiate changes~~ As proposed
5. Retirement bonus: accept elimination of \$25
6. ~~Hours and scheduling: if six week schedule posted six~~ five
~~weeks in advance, or as is currently~~ As proposed
7. ~~Guaranteed one weekend to work off if requested per~~
~~quarter~~
8. ~~Union orientation –~~ max 10 minutes
9. STD/LTD – ~~any changes to be negotiated, changes will not~~
~~increase cost or reduce/lessen coverage~~ Status Quo
10. 3 year contract
11. Accept health insurance (as we did verbally weeks ago)
12. Everything else except already what already TA'd – Status quo.